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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DEMILLE, DANTON D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/632,315

Applicant(s)

DEHLI, HANS

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 15-36, 40-45 and 50-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 37-39 and 46-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Specification***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention.** There appears to be no support in the specification for the c-shaped guide rails claimed. It would appear that the disclosure teaches only the v-shaped cross-section.

***Claim Rejections - 35 USC § 112***

3. **Claims 1-14, 38, 39, 46-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

4. In claim 1, line 4, and claim 46, line 4, there is no clear antecedent basis for "the guide wheels". At least one was previously set forth. Not a plurality.

5. Regarding claims 38, 39, there is no clear antecedent basis for "the bearing member".

6. Regarding claims 46-48, it is not clear what is intended to be comprehended by claiming a c-shaped cross-section.

7. Claim 48 appears to be inaccurate. Claim 48 recites a guide rail including a raceway and a bearing surface. The claim also recites the guide wheel being adapted to travel within the raceway and the biasing member being adapted to bear against the bearing surface. There

appears to be no disclosure for the guide wheel and biasing wheels to travel in the same raceway.

As understood they have separate and opposed raceways.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 1, 6, 8-10, 37 rejected under 35 U.S.C. 103(a) as being unpatentable over**

**Goodman in view of Haley.** Goodman teaches a massaging apparatus comprising at least one guide rail 22, 23, guide wheels 72, 73 and carriage assembly. Goodman may not teach a v-shaped cross-section for the shape of the wheels and guide rails however, Haley teaches this. It would have been obvious to one of ordinary skill in the art to modify Goodman to shape the wheels and guide rails v-shaped as taught by Haley as an obvious equivalent alternative and to also prevent sway along the guide rail.

10. **Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Roberts.** Roberts teaches an o-ring 99 on the apex of wheel 95 that fits in groove 31 of rail 12. It would have been obvious to one of ordinary skill in the art to further modify Goodman to provide a rubber o-ring on the perimeter of the wheel as taught by Roberts to eliminate vibration and noise. Goodman also teaches that the guide wheels are either formed of nylon or coated with a soft material.

Conventional materials such as nylon and urethane are well known to an artisan of ordinary skill and an obvious provision.

11. **Claims 11-13 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman in view of Bach et al.** There is no unobviousness to the shape of the guide or biasing wheels. Bach teaches wheels having a large diameter section and a smaller diameter section. The smaller diameter section includes an o-ring 25 fitted within an annular groove formed in the circumference of the smaller diameter section. It would have been obvious to one of ordinary skill in the art to modify Goodman to shape the wheels as desired such as taught by Bach to help maintain the wheels within the guide rails by including the larger diameter portion and to include the rubber o-ring to soften the vibrations and provide added traction.

12. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman.** Goodman may teach that the second raceway is the bottom surface of rails 22, 23 however, it would have been obvious to provide a second raceway separated from the first. Such is well within the realm of the artisan of ordinary skill should the location of the second wheels 66, 67 be required to be spaced from the rails 22, 23. it would have been obvious to one of ordinary skill in the art to modify Goodman to provide a second raceway spaced from the first should the location of the second wheels 66, 67 be spaced from the rails 22, 23.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. **Claims 5 and 46-48 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Goodman.** Goodman also teaches a first raceway on an upper surface of rails 22, 23 and a second opposing raceway on the bottom surface of said rails. Biasing wheels 66 and 67 act in opposition to the guide wheels to maintain the guide wheels within the first raceway.

15. Regarding claims 46-48, the rails 22, 23 have a raceway for the guide wheels 72, 73. This raceway is generally c-shaped in the portion that receives the guide wheels 72, 73.


16. **Claims 46 and 47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ookawa et al.** As can be seen in figure 1, rail 14 is c-shaped and therefore comprehends the claims.

***Election/Restrictions***

17. Applicant's election with traverse of claims 1-14, 37-39 and 46-49 in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the species are not patentably distinct. This is not found persuasive because the invention of the v-shaped guide rail and diamond shaped guide wheels has separate utility for any type of massaging member. The details of the guide rail and guide wheels do not require the specifics of the massaging member with the retainer.

18. The requirement is still deemed proper and is therefore made FINAL.

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